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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of )

Amendment of Section 73.622(b), )

Table of Allotments, )

Digital Television Broadcast Stations. )

(Boca Raton, Florida) )

MM DOCKET NO. 00-138

RM-9896

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Directed to: Federal Communications Commission

Federal Communications Commission  
Office of Secretary

**OPPOSITION TO APPLICATION FOR REVIEW**

Guenter Marksteiner ("Marksteiner")<sup>1</sup> hereby respectfully submits his Opposition to the "Application For Review" submitted on July 1, 2005, by Sherjan Broadcasting Co., Inc. ("Sherjan"), wherein Sherjan seeks review by the Commission of a staff decision in the above-referenced proceeding modifying the digital allotment for Station WPPB-TV, Boca Raton, Florida from Channel 44 to Channel 40, *Report and Order*, 17 FCC Rcd 7114 (MB 2002)("R&O"), a staff decision affirming the *Report and Order* and denying Sherjan's "Petition For Reconsideration" of the Report and Order, *Memorandum Opinion and Order*, 17 FCC Rcd 23528 (MB 2002)(First MO&O"), and a staff decision reaffirming the *Report and Order* and dismissing Sherjan's "Petition For Further Reconsideration" of the *Reconsideration Order, Memorandum Opinion and Order*, released May 23, 2005 (MB 2005)("Second MO&O"). With respect thereto,

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<sup>1</sup> The above-captioned proceeding commenced with the filing of a "Petition for Rule Making" by Palmetto Broadcasters Associated for Communities, Inc. ("Palmetto"), in which it requested a substitution of DTV Channel 40 for Station WPPB-DT's assigned DTV Channel 44. Marksteiner filed Reply Comments in support of that proposed change in allotment. The proposed channel substitution is an essential part of a settlement agreement between Palmetto and Marksteiner, which was later assumed by the School Board of Broward County, Florida, when it acquired the authorization for WPPB-TV. This agreement settled long-standing litigation between the parties with regard to WPPB-TV, WHDT-DT, Stuart, Florida (the first local television station at that community), and WHDT-LP and will allow the continued operation of WHDT-LP.

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*Opinion and Order*, released May 23, 2005 (MB 2005)(“Second MO&O”). With respect thereto, the following is stated:

1. In the Application For Review, Sherjan, the licensee of Class A television station WJAN-CA, NTSC Channel 41, Miami, Florida, continues to erroneously claim that operation of WPPB-TV on Channel 40 will cause prohibited interference to WJAN-CA. The Commission has already rejected in three successive decisions Sherjan’s claims of interference, and each time Sherjan returns arguing that established Commission standards for evaluating DTV channel modifications should be revised midstream. First, Sherjan attempted to argue that the census data which the Commission has exclusively used through the present day to evaluate DTV channel modification was not adequate. When the Commission rejected that claim, Sherjan came back attacking the standard population cell sizes authorized by the Commission for DTV channel modification evaluations, arguing that non-standard odd-sized population cells should instead be used. The Commission similarly rejected Sherjan’s new claim. Submissions in support of the WPPB-TV channel modification have repeatedly demonstrated compliance with the Commission’s criteria for protection of Class A television stations by DTV channel change proposals. Sherjan has never questioned the results shown in these submissions, only attacking the use of established Commission standards in reaching the results. As the *Report and Order* initially found, and the Commission has twice affirmed, the channel modification would not cause prohibited interference to WJAN-CA and would serve the public interest.

2. Sherjan’s argument that WPPB-TV’s use of the Commission’s long-established 1990 census data standard in evaluating DTV channel changes is misplaced and 2000 census data should be used is without precedent. The Commission has specifically rejected the use of other

data and determined that it would uniformly use 1990 Census data in the assessment of digital television proposals. *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 01-24, released January 19, 2001, at ¶72. As stated in the attached Engineering Statement of Joseph M. Davis, P.E., the Commission's evaluation of DTV channel change proposals, as well as minor modifications to DTV stations, has always employed 1990 census data and use of 1990 census data continues to the current time. In support thereof, the Engineering Statement points to the Commission's most recent DTV channel change decision, released a mere three weeks ago, on July 8, 2005, in which the Commission used 1990 census data to evaluate the channel change.<sup>2</sup> Although the Commission has used 2000 census data for DTV channel election purposes, DTV channel election is a very different process and has only begun recently. The Commission has always used 1990 census for changes to the DTV channel table and switching to a new standard at this point would place the DTV table in chaos.

3. Likewise, Sherjan's attack on WPPB-TV's use of a 1 km cell size to demonstrate lack of prohibited interference to WJAN-CA is without basis. The Commission itself has indicated that a finer resolution may be employed. *See, Public Notice, Additional Application Processing Guidelines for Digital Television*, released August 10, 1998. The attached Engineering Statement points out that although OET Bulletin 69 initially specified use of 2 km, it has not been uncommon for channel change proponents to use 1 km cells and states that it has long be the practice of Marksteiner's consulting engineer to do so. Indeed, use of such finer resolution improves the accuracy of the interference predictions. The Engineering Statement further notes

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<sup>2</sup> Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Oklahoma City, Oklahoma), MB Docket No. 00-104, RM 9812, *Report and Order*, released July 8, 1005.

that the Commission recently adopted a requirement that a minimum cell size of 1 km be employed in evaluating interference to Class A television stations, making the use of a 1 km cell size standard for evaluation of such stations. While Sherjan claims the Commission concluded that WPPB-TV was free to pick any cell size to evaluate interference, WPPB-TV actually used a standard 1 km size cell. It was Sherjan which proceeded to test 14 different odd-sized cells (less than 1 km and between 1 km and 2 km). As the Engineering Statement states, however, prior submissions show that the use of all cell sizes below 1.3 km show that the channel change complies with the Commission's interference restrictions.

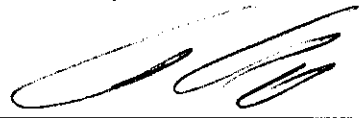
WHEREFORE, the premises considered, Marksteiner respectfully requests that Sherjan's "Application For Review" be denied and the *R&O*, *First MO&O*, and *Second MO&O* be affirmed.

Respectfully submitted,

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July 29, 2005

**Engineering Statement**  
in support of  
**OPPOSITION TO APPLICATION FOR REVIEW**  
prepared for  
**Guenter Marksteiner**  
WPPB-DT Boca Raton, Florida  
MM Docket 00-138

This engineering statement has been prepared on behalf of *Guenter Marksteiner*, in support of an *Opposition to Application for Review*, regarding a Memorandum Opinion and Order in Mass Media Docket 00-138.<sup>1</sup> The underlying Order changed the paired digital television (DTV) assignment for WPPB-TV (NTSC Channel 63, Boca Raton, Florida) from DTV Channel 44 to DTV Channel 40, as requested by the prior licensee of WPPB-TV.

In its *Application for Review*, filed July 1, 2005, *Sherjan Broadcasting Co., Inc. ("Sherjan")*, licensee of Class A television station WJAN-CA (NTSC Channel 41, Miami, FL), states that the predicted interference caused by WPPB-DT on Channel 40 to the first-adjacent WJAN-CA facility should be evaluated using population data from the 2000 U.S. Census, and that under this circumstance the Commission's 0.5% interference limit is exceeded for many cell sizes.

Prior submissions in this proceeding by the proponent have clearly demonstrated compliance with the Commission's criteria for protection of Class A stations by a DTV channel change proposal. In particular, in the comment / reply comment stage, results from an OET Bulletin 69<sup>2</sup> analysis showed that interference to WJAN-CA did not exceed the Commission's 0.5 percent allowance. The proponent's opposition to both of *Sherjan's* reconsideration petitions provided additional detail and results to address the matters raised by *Sherjan* regarding cell size and census data. In each instance, compliance with the Commission's 0.5 percent interference limit using 1990 Census data was demonstrated and *Sherjan* has not shown that those results were incorrect. As is required by the

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<sup>1</sup> *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida)*, MM Docket No. 00-138, RM 9896, Report and Order, released April 22, 2002.

<sup>2</sup> "OET Bulletin 69," as referenced herein, refers to the Commission's Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997.

**Engineering Statement**  
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Commission, the interference analysis was based on the use of 1990 U.S. Census data. A finer resolution cell size was also employed, as permitted by the Commission.<sup>3</sup>

In its *Application for Review*, *Sherjan* again claims that 2000 Census data should be employed in lieu of the standard 1990 Census data. However, the Commission's evaluation of DTV channel change proposals as well as minor modifications to DTV stations has always employed 1990 Census data and continues to the current time. For example, just this month the Commission released an Order<sup>4</sup> to change the DTV channel for KAUT-DT, Oklahoma City, OK, which was based on the use of 1990 Census data. The associated NPRM was issued in June, 2000, around the same time as the NPRM in the subject MM Docket 00-138 regarding WPPB-DT.

While the standard cell size specified in OET Bulletin 69 is 2 km, the use of 1 km cell size by applicants is reasonable and not uncommon. It has long been the practice of the undersigned to employ 1 km cells for OET Bulletin 69 analysis of interference impact to Class A, Low Power Television ("LPTV"), and television translator facilities, since their service areas are smaller than that of full service stations.

The instant situation does not involve an unusual or odd cell size. For OET Bulletin 69 analysis, the Commission routinely accepts the applicant's specification of cell and step size. Recently, the Commission adopted<sup>5</sup> a requirement that a minimum cell size of 1 km be employed in the evaluation of interference caused to digital Class A, digital LPTV, and digital television translator facilities. Therefore, the use of a 1 km cell size may be considered "standard" for evaluation of such smaller facilities and is consistent with Commission procedures.

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<sup>3</sup> Public Notice "Additional Application Processing Guidelines for Digital Television (DTV)" August 10, 1998.

<sup>4</sup> Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Oklahoma City, Oklahoma), MB Docket No. 00-104, RM 9812, Report and Order, released July 8, 2005.

<sup>5</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Report and Order, released September 30, 2004, at para. 103.

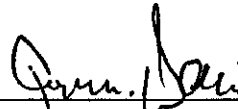
**Engineering Statement**

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Summarizing the previously provided OET Bulletin 69 results, the WPPB-DT channel change would increase interference to WJAN-CA by 0.42 percent (affecting 6,963 persons out of a baseline of 1,675,015) using 1990 Census data and 1 km cell size. Prior submissions show that the proposal satisfies the Commission's 0.5 percent allowance for all cell sizes below 1.3 km with 1990 Census data. Even using 2000 Census data and a standard 1 km cell for Class A evaluation, the impact to WJAN-CA is 0.34 percent (6,592 persons of a 1,915,241 baseline).<sup>6</sup> Under either scenario, compliance with the Commission's 0.5 percent allowance is satisfied.

**Certification**

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.



Joseph M. Davis, P.E.

July 29, 2005

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<sup>6</sup> *Sherjan's* December 24, 2002 Further Petition for Reconsideration indicates that with a 1 km cell and 2000 Census data the impact to WJAN-CA is 0.45 percent, also within the 0.5 percent allowance.

**CERTIFICATE OF SERVICE**

I, Sai MacCormack, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Opposition to the Application for Review" was sent this 29<sup>th</sup> day of July, 2005, by first-class United States Mail, postage prepaid to:

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